

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

JAMES WESLEY BURKE,

Plaintiff,

v.

McCURTAIN COUNTY

OKLAHOMA, ET AL.,

Defendant(s).

No. CIV 09-310-RAW

ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS

Plaintiff, a prisoner appearing pro se and seeking to bring a civil action, has filed a motion to proceed *in forma pauperis* and supporting affidavit in conformance with 28 U.S.C. § 1915(a), as amended by the Prison Litigation Reform Act of 1995 (PLRA). Having reviewed the motion, the court finds plaintiff is entitled to proceed without full prepayment of the filing fee, and the motion is GRANTED. Pursuant to 28 U.S.C. § 1915(b)(1), however, plaintiff shall be required to pay the full **\$350.00** filing fee as set forth below.

IT IS HEREBY ORDERED that within twenty (20) days, plaintiff shall pay an initial partial filing fee of **\$16.00**, which represents 20 percent of the greater of the (1) average monthly deposits, or (2) average monthly balance in plaintiff's inmate account(s) for the six-month period immediately preceding the filing of the complaint. 28 U.S.C. § 1915(b). After payment of the initial partial filing fee, plaintiff shall make monthly payments of 20 percent of the preceding month's income credited to his prison account(s), until he has paid the total filing fee of **\$350.00**. 28 U.S.C. § 1915(b)(2). Monthly payments collected from plaintiff's prison account(s) shall be forwarded to the Clerk of Court each time the account balance exceeds \$10.00, until the full \$350.00 filing fee is paid. Separate deductions

and payments shall be made with respect to each action or appeal filed by plaintiff. The PLRA requires the district court to assess and collect the \$350.00 filing fee even when a case is dismissed before summons and complaint. *See* 28 U.S.C. § 1915(b)(1).


IT IS FURTHER ORDERED THAT The agency having custody of plaintiff shall collect and forward such monthly payments to the Clerk of Court until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2). Interference by plaintiff in the submission of these funds shall result in the dismissal of this action.

Plaintiff is advised that notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss at any time all or any part of such complaint which (1) is frivolous or malicious, (2) fails to state a claim on which relief can be granted, or (3) seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A, 1915(e)(2)(B). Plaintiff is further advised that the monthly payments will continue to be collected until full payment of the filing fee has been received by the court, even after disposition of the case, and regardless of whether relief is granted or denied.

IT IS FURTHER ORDERED that the Clerk of Court shall not issue process until further order of the court.

IT IS FURTHER ORDERED that the Clerk of Court send a copy of this order to plaintiff's custodian and the trust fund officer at his institution.

IT IS SO ORDERED this 14th day of September, 2009.


Ronald A. White
United States District Judge
Eastern District of Oklahoma